

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Petition of City of Cambridge
Regarding Streetlight Purchase

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D.T.E. -

Petition of City of Cambridge

Pursuant to G.L. c. 164 s. 34A, the City of Cambridge hereby petitions the Department of Telecommunications and Energy to resolve a dispute between the City and Cambridge Electric with respect to the City' purchase of street lighting equipment.

PETITIONERS

1. The City of Cambridge is a Massachusetts municipal corporation, with an address of

City of Cambridge, Massachusetts
795 Massachusetts Ave.
Cambridge, MA 02139 – 3201

JURISDICTION

2. The Department has jurisdiction to resolve any matter arising in connection with the exercise of a municipality's option to convert streetlights pursuant to G.L. c 164 s 34A (d).

FACTS

- 4) On June 2, 2003 the City mailed a conversion notice to the Company and the Department, (attached as Exhibits A) regarding petitioner's intention to convert the overhead streetlights to the alternative tariff authorized by G.L c 164 s 34A.
- 5) Since June of 2003, the City and the Company have met face to face on numerous occasions to negotiate the issues associated with the license agreement, the purchase and sale agreement and the purchase price.

- 6) The Company purchase price methodology assigns a positive value to all streetlight equipment, including equipment that is sixty years old.
- 7) The application of the “Boston Edison Method” to the gross plant values provided by the company, in a fashion that allows older streetlight equipment to have a negative value, yields a purchase price for all of the municipal streetlights of approximately \$790,000. (See Attachment B prepared by Paul Chernick of Resource Insight Inc.)
- 8) The Company purchase price formula, which does not allow older streetlight equipment to have a negative value, yields a purchase price of approximately \$1.7 million for all of the municipal streetlights (See attachment C, which is the calculation of the purchase price for the City’s lights prepared by the Company.)
- 9) The first two pages of Attachment C is the Company provided statement, from the Company general ledger of the plant additions in Cambridge, plant retirements in Cambridge, and gross plant balance in Cambridge for every year since 1942.
- 10) The last seven pages of Attachment C is the Company provided statement of net book, as Dec 30, 2003 which the Company has allocated as \$1,724,206 to City lights, \$265,297 to MDC lights, and \$228,598 to private lights.
- 11) The City and the Company have exchanged numerous drafts of the terms and conditions of the proposed license agreement.
- 12) In addition to price, the City and the Company have been unable to reach agreement regarding the City right to purchase the overhead lights only and exclude the purchase of the underground lights.
- 13) The Company insists that the City must purchase all of the lights or none of the lights.
- 14) The City believes that the portion of the purchase price that relates to City overhead, as opposed to City underground served streetlights could range between 20% and 70% of the total value, and the City has proposed that 50% of the total value be used as a reasonable compromise as the portion of the value attributable to overhead lights. (See Attachment D, prepared by Paul Chernick of Resource Insight, Inc.)
- 15) The Company has been unwilling or unable to provide a separate price for the overhead lights.
- 16) Chapter 258 of the General Laws limits the liability of the City for third party injury claims to \$100,000.

- 17) The City has requested that the City's liability associated with such third party claims be limited to the dollar limits specified in Chapter 258 of the General laws.
- 18) The Company has insisted that City must accept liability associated with injury to third parties in excess of the limits authorized by Chapter 258 of the General Laws.
- 19) The City and the Company met at the department in an informal meeting, hosted by the Department's General Counsel, on April 21, 2004 to explore the possibility of using an informal dispute resolution procedure to resolve outstanding issues.
- 20) At the April 21 meeting, at the department, in response to the City's complaint that the Cambridge purchase price assigns a positive value to 60 year old equipment, notwithstanding the ruling in DTE 01-25, Mr. Jeff Alves of the Company, responded: that Company thinks that DTE 01-25 "was a bad ruling".
- 21) The Company took the position at the April 21, 2004 meeting that the Company was opposed to an informal dispute resolution procedure to resolve the issues remaining between the City and the Company.
- 22) The parties have been unable to resolve their disagreements in three subsequent discussions, at the Company's Westwood Offices on June 4, 2004, and in two follow up teleconferences on June 11, 2004 and June 16, 2004.
- 23) Since the City and the Company have been unable to resolve these issues through negotiation, the City has decided to file this petition for dispute resolution.

Issues in Dispute

- 24) The City believes the City is entitled to a purchase price that allows over depreciated streetlight equipment to have a negative book value, in compliance with the ruling in DTE 01-25. The Company disagrees.
- ~~25) The City believes the City has the right to buy the overhead streetlights only. The Company disagrees.~~
- ~~26) The City believes the City has the right to purchase streetlights without having to accept liability for third party injury claims in excess of the limits allowed by Chapter 258 of General Laws. The Company disagrees.~~

Request for Relief.

- 25) The City does not believe that the department needs to convene an adjudicatory hearing to answer the policy questions raised by this petition:

A) Is the City entitled to a purchase price that allows older streetlight equipment to have a negative value?

B) Is the City entitled to a purchase price calculated in conformance with DTE 01-25?

~~C) Is the City entitled to purchase the overhead lights only?~~

~~D) Does the streetlight conversion statute require the city to accept liability for third party injury claims beyond the limits authorized by Chapter 258 of the General laws as the precondition for exercising the streetlight purchase rights described in the streetlight conversion statute.~~

~~26) Following the filing of the company's Answer to this petition, the City requests that the department hold a procedural conference, the object of which would be to determine the need for a full adjudicatory hearing, or in the alternative lay out the process for a resolution of the policy questions raised by this dispute.~~

~~27) There is no right to an adjudicatory hearing granted in Chapter 164 Section 34A. The City does not believe that the City's right to purchase streetlights should be compromised by a six month adjudicatory hearing process, particularly if the policy questions are as straightforward as they appear.~~

~~28)~~26) The City requests that the department issue an order that answers the two ~~four~~ policy questions raised above, and directs the Company to provide the City with a purchase price offer that complies with those policies.

Respectfully Submitted By:

John Shortsleeve
Attorney for the City of Cambridge